

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
RULE 12: "STORAGE TANKS" ) DOCKET NO. 24-001-R**

RESPONSIVE SUMMARY

Comes now the Department of Energy and Environment, Division of Environmental Quality (DEQ), by and through Michael McAlister, Managing Attorney, and provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Regulation No. 8.815.

**I. INTRODUCTION**

The public comment record for Docket No. 24-001-R contains one (1) comment pertaining to Arkansas Pollution Control and Ecology Commission Regulation No. 12, entitled "Storage Tanks."

The Notice of Proposed Rule Changes, Public Hearing, and Public Comment Period was published on March 2 and 3, 2024. The Arkansas Pollution Control and Ecology Commission conducted one (1) public hearing on the proposed amendments to Rule 12 in North Little Rock on March 27, 2024. The public comment period ended on April 10, 2024, at 4:30 p.m. (Central Time).

**II. RESPONSES TO WRITTEN COMMENTS**

The following people or organizations made written comments during the public comment period:

EXHIBIT B

COMMENT 1: Jason Kearney, Legislative Attorney, Administrative Rules Section, Bureau of Legislative Research.

"After reviewing the rule referenced below, I only had the following questions:

1) Rule 12.306: Amount of Reimbursement – Is there a reason that the proposed cap for reimbursement in the amended rule (\$1,992,500) does not mirror the cap set out in Act 422 of 2023 (\$2,000,000)?

2) Did the Advisory Committee on Petroleum Storage Tanks advise DEQ and the Commission regarding promulgation of these rules, per Ark. Code Ann. § 8-7-904(h)?"

RESPONSE: DEQ acknowledges the comment and responds as follows:

In regard to question #1, Ark. Code Ann. § 8-9-907(a) requires that the owner or operator of the storage tank pay the first \$7,500.00 for corrective action, to "be considered as the equivalent of an insurance deductible."

Ark. Code Ann. § 8-9-907(b), prior to Act 442 of 2023, stated that "[p]ayment for corrective action shall not exceed one million five hundred thousand dollars (\$1,500,000) per occurrence." Acknowledging the requirements in § 8-9-907(a), Rule 12.306(A) correspondingly provided that the Trust Fund would provide reimbursement to eligible owners/operators in an amount not to exceed one million four hundred ninety-two thousand five hundred dollars (\$1,492,500) per occurrence. The statutory cap in § 8-9-907(b), minus owner/operator's obligation for the \$7,500 "deductible" in § 8-9-907(a), yields total amount reimbursable from the Trust Fund.

Act 442 of 2023 raised the cap in Ark. Code Ann. § 8-9-907(b) from \$1,500,000 to \$2,000,000. This pending rule change amends Rule 12.306(A) to reflect the increase of the reimbursable amount to \$1,992,500. Again, this reflects the statutory cap, minus

owner/operator's obligation for the \$7,500 "deductible", yielding total amount reimbursable from the Trust Fund.

This rule amendment consistent with interpretation and application of the statute reflected in the current rule. Because the rule amendment is consistent with the statute, the Division of Environmental Quality does not recommend any further revision of the rule in response to this point.

In regard to question #2, Ark. Code Ann. § 8-7-904(h) provides that the Advisory Committee on Petroleum Storage Tanks shall advise the Division of Environmental Quality (DEQ) and the Arkansas Pollution Control and Ecology Commission (PC&EC) regarding promulgation of rules. However, rather than promulgation of new rules or changes initiated by DEQ or PC&EC, these pending revisions to Rule 12 are in response to legislative mandates in Ark. Code Ann. § 17-1-107, Ark. Code Ann. § 17-1-108, and to incorporate the changes approved Act 422 of 2023. While the Committee was fully informed of the passage of Act 422 and the resulting need to update Rule 12 to reflect the changes in the statutory cap, the advice of the Committee was not required to comply with these legislative mandates.

Respectfully Submitted,

By: 

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