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SUBJECT: *Underground Storage Tanks*

ISSUE: *Strategies for State Adoption of EPA 2015 UST Amendments*

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Executive Summary – In 2015, the Obama-era EPA adopted a number of new testing and inspection requirements for UST system components. The new EPA regulations apply directly to the 12 states without state UST program authority. The compliance deadline for tank owners in these states is October 13, 2018. The remaining 38 states with state UST program authority must adopt the same or similar regulations no later than October 13, 2018 in order to receive federal grant money to run their programs. The compliance deadline for tank owners in these states is three years from the date that state regulations are finalized. PMAA has won substantial regulatory flexibility in the federal regulations that save every tank owner/operator thousands of dollars in annual compliance costs. State regulators should be made fully aware of this wide-ranging flexibility approved by the EPA so it can be folded into state regulations as well.

The following five areas of flexibility won by PMAA have been approved by the EPA as “equally protective of the environment” and “no less stringent than federal regulations.” Meeting both these federal standards gives state regulators the green light to adopt the alternative methods of compliance into state regulations as well.

1. REFERENCING INDUSTRY STANDARDS

Prevent Adoption of PEI Recommended Practices as Regulatory Requirements: The 2015 UST amendments are performance standards that allow flexible and varying methods for compliance so long as those methods are equally protective of the environment as the federal regulations. The amendments allow three different methods of compliance: follow the EPA regulations; follow applicable industry standards, or follow state program authority requirements. There are only two industry standards that apply the 2015 UST amendments; Petroleum Equipment Institute’s RP-1200 for testing and inspection and RP-900 for walkthrough inspections.

However, it is important to understand that both standards require far more comprehensive compliance measures than the federal regulations. For example, RP-900 calls for *weekly* walkthrough inspections while the EPA regulations require *monthly* inspections. RP-1200 calls for liquid integrity testing of containment sumps to the top of the sump wall while the EPA allows for low liquid level testing below the penetration points in the sump wall. The EPA regulations **do not require** states to adopt these

standards in whole or in part. States may adopt their own alternative methods of compliance and are not restricted to following industry standards alone. ***Your state implementing authority should not adopt RP-1200 or RP-900 as regulatory requirements but refer to each as available standards for compliance to the extent that they reflect EPA requirements, but nothing more.*** It should be noted that PEI standards are no longer ANSI certified. ANSI certification ensures that standards are balanced and not biased for or against any one industry. The absence of ANSI certification for these standards is a point of concern for marketers because there is no third-party guarantee that the standards are not biased in favor of petroleum equipment installers and manufacturers. For these reasons, state program authorities should not adopt these standards into their regulations.

Sample Regulatory Language: *Reference to industrial standards under this part shall not impose any additional regulatory requirements not included under 40 CFR Part 280 of the federal UST regulations.*

2. CONTAINMENT SUMP INTEGRITY TESTING

- ***Incorporate PMAA Alternative Test Method for Containment Sumps into State Regulations -*** Last month, the EPA officially 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." This means that the PMAA test method can be used in place of the RP-1200 containment sump test method referenced in the EPA regulations. The PMAA test method allows for liquid integrity testing of sumps below the level of penetration points (where pipes and other equipment enter) in the sump walls. The RP-1200 sump test method, on the other hand, requires liquid level testing by adding water to a sump to a minimum of 4 inches above the highest sump penetration points or sump wall seam, whichever is higher.

The PMAA low level liquid testing is advantageous because it avoids testing penetration points in the sump wall for water tightness. *Making the penetration points watertight (changing grommets, flanges, test boots, etc.) in order to test to within 4 inches of the top of the sump wall would cost thousands in extra compliance costs just to get the sump ready for testing.* The PMAA alternative method allows for low level liquid testing of the sump walls so long as the sump is equipped with a liquid level sensor alarm (mounted below the penetration points) that automatically activates a positive shutdown of the submersible pump, or in the alternative, an automatic shutdown of the dispenser pump so long as the facility is staffed when the system is operational and a manual shutdown occurs. State regulators should be made aware of the PMAA alternative test method for sumps and incorporate it into regulations as an approved test method (see attached EPA Q&A document that references the PMAA alternative method at bottom on page 5, top of page 6).

- ***Advantages of PMAA Alternative Test Method -*** State regulators should be made aware of the advantages of the PMAA alternative test method for containment sumps. The PMAA method is actually *more* protective of the environment because it will automatically shut down product flow before it reaches penetration points in the sump wall where most leaks occur. The PMAA test method also ensures that test liquid does not flow back into the interstitial areas of piping in the event a grommet, seal or test boot fails. The PMAA alternative method will reduce compliance costs on small business petroleum marketers by thousands of dollars in test preparation costs and will significantly reduce the volume of hazardous waste water generated during testing. Finally, States that are prohibited by law to adopt rules more stringent than

federal regulations should approve the PMAA alternative method because failure to do so would result in more stringent state requirements. Please see link 1. Click [here](#) to see EPA OUST's "Underground Storage Tank (UST) Technical Compendium About the 2015 UST Regulations" document that approves low liquid level integrity testing of containment sumps. Click on "**Spill Buckets, Under Dispenser Containment Sumps, Containment Sumps**" in the table of contents and scroll down to "**Containment Sump – Alternative Test Procedures.**"

- **Important Points About Sump Testing State Regulators Should Know** – Only sumps used for containment and interstitial monitoring of piping require testing. Testing is only required once every three years. Testing is not required for double walled sumps where the interstitial area of the sump walls is **periodically** monitored. Continuous monitoring of the interstitial area of sump walls is not required under the EPA UST amendments for the sump to be exempted from testing. PMAA won the concession that only **periodic** monitoring is required for the exemption from testing to apply. Also, the EPA has agreed to let sump test liquid be reused for testing at other sites to reduce the volume of hazardous waste water generated during sump and spill bucket testing. Finally, the EPA has clarified that containment sumps installed **before** the date of the state's adoption of the Energy Act of 2005 are not required to be tested for integrity provided an annual primary line precision test is conducted on double walled pipes of the containment system.

3. WALK THROUGH INSPECTIONS

- **Prevent Adoption of PEI RP-900 Walkthrough Inspection Provisions More Stringent than Federal Requirements** - The EPA regulations reference PEI RP-900 as one possible model to follow for compliance with walkthrough inspections requirements. However, the RP-900 walkthrough inspections are more frequent (weekly as opposed to monthly under EPA rule) and involve more components than required by the EPA. State regulators should understand that RP-900 is more expansive than the EPA requirements. States should not incorporate into regulation any provision in RP-900 that is not required under the EPA amendments.
- **Important Points about Walkthrough Inspections that State Regulators Should Know** – PMAA won flexibility in the EPA walkthrough requirements. First, containment sumps must only be inspected annually instead of monthly. Second, the EPA regulations require inspection of overfill prevention equipment only once every three years. There is concern that removal of overfill protection devices (drop tube sensors) for inspection would cause damage requiring replacement. Drop tubes can become seized in place, hindering or preventing inspection. Under the EPA rule, if a drop tube is seized in place, removal is not required for inspection. Instead, tank owner can install an audible alarm as the primary overfill prevention method provided it activates at 90 percent capacity or alerts the driver one minute before overfilling. The in tank positive shutdown device can be used as a secondary overfill method and not require inspection. Finally, the EPA regulations allow walkthrough inspections to be conducted in-house. Third party vendors are *not required* but may be used.

4. COMPLIANCE DEADLINE

- **Prevent State Regulators from Selecting Earlier Compliance Deadline** – The 12 states **without** UST program authority are required to meet the EPA's October 13, 2018 UST compliance

deadline. The remaining 38 states with UST program authority have two compliance deadline options under the 2015 amendments; adopt the EPA's October 13, 2018 compliance deadline, or select a date that is three years beyond the date that state regulations are finalized. To maximize the three-year deadline, states should finalize their own regulations as close to the October 13, 2018 deadline as possible.

5. ADDITIONAL REGULATORY FLEXIBILITY WON BY PMAA

- ***State Regulators Should Be made Aware of Additional Regulatory Flexibility*** – PMAA won the following provisions offering flexibility and compliance cost savings in the 2015 UST amendments:
- Unified all compliance deadlines requirements for inspection and testing into a single deadline and extended it out three years to October 13, 2018. (States with UST program authority may extend deadline further to October 13, 2021.)
- Established an alternative low liquid level integrity test method for sumps used as secondary containment and interstitial monitoring of pipes, saving thousands in compliance costs.
- Eliminated a provision requiring integrity testing of interstitial areas in underground tanks and piping equipped with secondary containment.
- Reduced the scope and complexity of the 30-day walkthrough inspection so it can be performed in-house rather than by costly third-party vendors.
- Reduced the inspection frequency of spill buckets from monthly inspection to annual inspection.
- Established a test exception for double walled sump testing used for containment and interstitial monitoring of piping and double walled spill buckets provided both walls of the secondary containment area are periodically monitored.
- Eliminated testing requirements for overfill equipment and established periodic inspections instead.
- Changed secondary containment monitoring requirements from continuous monitoring to periodic monitoring.
- Changed the trigger for installation of under dispenser containment (UDC) sumps from “repair” to actual replacement of a dispenser and associated equipment down to the vertical riser pipe of the UST system.
- Prevented the elimination of ball floats in overfill equipment provided another form of overfill protection is used as primary method. Ball floats may still be used as a *secondary* form of overfill protection.
- Established implementation flexibility for testing and inspection requirements on the state level by allowing states to adopt *alternative methods* for testing and inspection provided they are no

less protective of the environment than EPA regulations. This allows for significant state variation from EPA regulations provided they are no less protective of the environment.

- Established that double walled piping systems, installed *before the date of state adoption of regulations implementing requirements of the federal Energy Act of 2005*, do not require secondary containment and interstitial monitoring. Instead owner/operators of such systems may choose to perform annual line tightness testing as the method of piping release detection and the containment sump and sensor would not require periodic testing.
- Established that periodic testing of double walled spill prevention equipment is not required if the integrity of both walls is periodically monitored (spill buckets and sumps used for secondary containment and interstitial monitoring of piping).

Additional Information

Attached are the following documents that will help in implementation efforts:

1. Click [here](#) to see EPA OUST's "*Underground Storage Tank (UST) Technical Compendium About the 2015 UST Regulations*" document that approves low liquid level integrity testing of containment sumps. Click on "***Spill Buckets, Under Dispenser Containment Sumps, Containment Sumps***" in the table of contents and scroll down to "***Containment Sump – Alternative Test Procedures.***"
2. Click [here](#) to see a list of states with UST program authority.
3. Click [here](#) to see an overview of the 2015 UST amendments.