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TO: State Association Executives

FROM: Mark S. Morgan, PMAA Regulatory Counsel

RE: Underground Storage Tank Compliance Deadline

DATE: July 27, 2018

PMAA is receiving numerous questions regarding the deadline for compliance with the 2015 EPA UST inspection and testing requirements. There are two issues that have come up relating to the deadline.

1. EPA Denies Request for a Three-Year Extension of New UST Requirements:

First, the U.S. EPA has denied the request for a three-year UST compliance deadline extension. The EPA denied the request because the agency said it had already given significant cost saving concessions and flexibility, including an initial three-year compliance deadline during the original rulemaking process. The agency is also concerned that another three-year extension would generate lawsuits by a number of environmental groups and state UST program authorities. Finally, the agency said a deadline extension would create an unfair playing field for tank owners because it would only apply to the 12 states without UST program authority that are bound by the federal regulations. The federal regulations do not apply in the remaining 38 states that are authorized to run their own UST programs under state adopted regulations.

While the EPA won't extend the compliance deadline, they have agreed to delay its enforcement in the event there is a shortage of contractors or equipment. The EPA said enforcement discretion would be given to those tank owners showing a "good faith effort" to comply by the deadline but are unable due to equipment or contractor shortage. Evidence of a good faith effort would be having a contract for compliance work in place by the October 13, 2018 deadline.

PMAA will continue to work with the EPA and industry standard groups to develop guidance that offers additional compliance flexibility to states that choose to adopt them.

2. Which Compliance Deadline Applies and Where:

Second, many of you probably received the from EPA OUST Director Carolyn Hoskinson reminding tank owners of the upcoming October 13, 2018 compliance deadline for tank owners. It is important to understand that the October 13, 2018 deadline only applies in **some** states. Most states adopted a compliance deadline after October 13, 2018. The EPA's UST regulations allow states to adopt the October 13, 2018 federal compliance deadline **or** establish their own

deadline any time thereafter, but no later than October 13, 2021. Here's how the states break out with respect to compliance deadlines:

- **October 13, 2018** – This compliance deadline applies to the **12 states** that do not have UST program authority. This date is three years from the date the federal rule was effective (October 13, 2015). The 12 states are: California, Arizona, Wyoming, Alaska, Wisconsin, Illinois, Ohio, Kentucky, Michigan, New York, New Jersey and Florida.
- The October 13, 2018 deadline **also applies** in a handful of the remaining 38 states where state program authorities **specifically chose to adopt** the EPA deadline in their state regulations.
- All remaining states adopted a compliance deadline sometime after October 13, 2018. Most of these states adopted a compliance date three-years from the effective date of the state regulation. For example, if a state finalized their regulation on October 13, 2018, tank owners would have until October 13, 2021 to comply. Other states picked an arbitrary date between October 13, 2018 and October 13, 2021.
- It is important to contact your individual state UST program authority to determine the correct compliance deadline for in your area.

3. How can States Adopt a Compliance Deadline after the October 13, 2018 Federal deadline?

The EPA regulations only apply in 12 states. The remaining 38 states are permitted to adopt their own regulations provided they are “no less stringent” than the EPA regulations. Most of these states simply adopt the federal rule **verbatim**. However, the EPA’s final rule **does not** specifically contain language that sets the compliance deadline as “October 13, 2018”. Instead, the rule only requires tank owners to comply “three years after the effective date of this final UST regulation.” The federal rule became effective on October 13, 2015. Therefore, the compliance deadline for tank owners in the 12 states under EPA jurisdiction is October 13, 2018 (three years from effective date of the rule).

The remaining 38 states adopt their own UST rules. Most adopt the EPA’s regulatory language verbatim. When states do this, they are also adopting the three-year compliance deadline contained in the language of the federal rule. They are **not** adopting the October 13, 2018 deadline because that date does not appear in the language of the rule. As a result, the compliance deadline in these states is three years from the effective date of the **state rule**. EPA requires states to have their regulations adopted by October 13, 2018. Since most states won’t have their UST rules in place until sometime in 2018, the compliance deadline in these states won’t occur until three years later, sometime in 2021.

There are a few states that have adopted the federal regulatory language but, chose to establish a specific compliance date in place of the three-year compliance period. These states can select a compliance date anywhere between October 13, 2015, the effective date of the federal rule and October 13, 2021, three years from the date that states must have their regulations in place.

Finally, a handful of the 38 states with program authority simply chose to adopt the October 13, 2018 federal compliance deadline. Contact your UST regulator to find out which compliance deadline was adopted in your state.

Have Questions? Contact Mark S. Morgan, PMAA Regulatory Counsel at (202) 487-4536 or at mmorgan@pmaa.org.