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Louisiana Department of Environmental Quality Comments on EPA's Proposed Revisions to 40 CFR Parts 280 and 281, Document ID No. EPA-HQ-UST-2011-0301, Revising Underground Storage Tank Regulations – Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (76 FR 71708, November 18, 2011)

This letter serves as the official response of the Louisiana Department of Environmental Quality (LDEQ) to EPA regarding the proposed revisions to 40 CFR Parts 280 and 281, Document ID No. EPA-HQ-UST-2011-0301, Revising Underground Storage Tank Regulations – Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training.

IV. Proposed Revisions to the Requirements for Owners and Operators of Underground Storage Tanks

A. Changes to Establish Federal Requirements for Operator Training and Secondary Containment (71712 - 71718)

LDEQ Response:

LDEQ has promulgated regulations and implemented Operator Training and Secondary Containment as required by the Energy Policy Act of 2005. Per 76 FR 71756, states already meeting these Energy Policy Act requirements need not change their programs to receive State Program Approval, therefore LDEQ has no comments to the proposed Operator Training and Secondary Containment regulations.

B. Additional Requirements for Operation and Maintenance

1. Walkthrough Inspections (71718 - 71720)

LDEQ Response:

Louisiana understands the reasoning behind this regulation because there are UST system components that are currently not required to be monitored and these areas contribute to releases of regulated substances to the environment. Walkthrough inspections will allow these areas to be

monitored periodically, allowing releases to be identified faster. This will result in increased safety for the facility workers and general public, less environmental contamination, and less impact on the Louisiana Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF).

Spill bucket cracks and submersible turbine pump (STP) leaks cause contamination, and these leaks often go undetected for long periods of time. Releases from spill bucket cracks can be detected at facilities that utilize groundwater or vapor monitoring release detection devices (RDDs). Spill bucket releases at facilities without RDDs may not be detected until the regulated substance causes problems at points of exposure. Releases from STPs can be detected if STP containment sumps are installed and leak sensors are installed, or during visual observation of the STP area. Cracked spill buckets are often still discovered by visual inspection during UST compliance evaluation inspections (LDEQ has cited 31 UST facilities in the past year for having cracked spill buckets), and subsurface contamination from spill bucket cracks is continuing to occur (2 confirmed product releases from spill bucket cracks in the past year). Three confirmed releases were attributed to submersible turbine pump leaks in 2011.

Cost to small businesses is a factor, as many UST owners will have to hire a contractor to perform the inspections. STP sump covers are very heavy and difficult to open, which may require some owners to hire someone physically capable of performing this task. For facilities with STP sumps, the wear and tear on STP lid gaskets can cause water intrusion into the STP sumps, creating corrosion problems and undue leak sensor alarms for facilities that utilize sump sensors.

LDEQ recommends that EPA use the currently established area-specific inspection frequencies to dictate the required inspection intervals. For example, STP containment sumps should be inspected once every 12 months. This could be done whenever the automatic line leak detectors are tested by the tightness tester, thus reducing the number of times the STP sump cover has to be removed, helping owners with the difficulty in performing this inspection (size and weight of covers), reducing wear and tear on STP sump gaskets, and other factors.

For facilities that have STP containment sump and dispenser cabinet sump sensors installed, the walkthrough inspection requirement should be waived. Spill buckets and dispenser cabinets should be checked monthly due to ease of inspection. Release detection equipment should be checked monthly since this is a normal established frequency. Corrosion protection equipment should be checked every 60 days to match current regulatory requirement for rectifier inspection frequency.

In the last two years, LDEQ has cited 185 UST facilities for not providing corrosion protection on metal flexible hoses under dispensers and in STP areas that are in contact with soil or water. Inspecting dispenser and STP areas would allow UST owners to identify if this problem exists and also allow inspection of the condition of the metal flexible hoses, resulting in better UST compliance by UST owners and less regulated substance releases from metal flexible hose corrosion and mechanical damage. In the past year, 19 confirmed releases were attributed to leaking flexible connectors located under dispensers and in STP areas. Of these releases, many were caused by mechanical damage via abrasion, physical stress on the piping, corrosion, etc. Periodic inspection of these areas could have resulted in replacement of the metal flexible hoses prior to their leaking.

EPA asked the question: Should EPA consider not requiring owners and operators to remove water from contained sumps when both of the following conditions exist?

- 1) Owners and operators choose to connect an anode to the metal components in the sump for corrosion protection, and
- 2) The sump is not used for interstitial monitoring. (71720)

LDEQ Response:

For facilities that are not performing interstitial monitoring, sumps should be allowed to contain water as long as corrosion protection is provided. Water in containment sumps is a common problem in the Louisiana due to heavy rainfall amounts and high water table. For sumps installed years ago, polyethylene sumps were the industry standard and this material is prone to warping and cracking, thus allowing water intrusion. Penetration fittings, especially for electrical conduit, in these older sumps are notorious for leaking water and are difficult and expensive to repair. Requiring these to be water-free would create an increased expense to UST owners with this equipment. When installed, polyethylene sumps were industry standard and UST owners with them would be penalized for trying to be proactive by installing sumps prior to it being a regulatory requirement, whereas owners that did not install sumps would not have to incur this expense.

LDEQ currently requires water-tight containment sumps for all UST systems installed after December 20, 2008, and for all containment sumps that are used for interstitial monitoring.

B. Additional Requirements for Operation and Maintenance

2. Spill Prevention Equipment Testing (71720 - 71721)

LDEQ Response:

LDEQ feels that spill bucket testing should be required, but the testing frequency should be reduced from every 12 months to once every three years. Based on the information provided in 76 FR 71720, spill buckets fail in three to seven years. Reducing the proposed frequency will be less of a financial burden on the regulated community and will still offer environmental protection by requiring testing at the time the buckets are expected to fail.

Current Louisiana regulations require fuel carriers to remove any product left in spill buckets, but the fuel carriers and owners are not checking for bucket damage. Cracked spill buckets are often still found during UST compliance evaluation inspections (LDEQ has cited 31 UST facilities in the past year for having cracked spill buckets), and subsurface contamination from spill bucket cracks is continuing to occur (2 confirmed product releases from spill bucket cracks in the past year).

B. Additional Requirements for Operation and Maintenance

3. Overfill Prevention Equipment Tests (71721 - 71722)

LDEQ Response:

LDEQ feels that this timeframe is appropriate. LDEQ UST inspectors routinely find rusted ball float valves when they are checked by facilities. Releases due to tank overfills are still occurring (statewide average of 3 per year in last 4 years).

The phase-in period should be dependent on the age of the overfill device installed, not the age of the tank. According to the proposed phase-in period, a UST owner with older tanks that have recently upgraded their overfill devices will be required to test them sooner, thus being penalized for being pro-active.

LDEQ understands that surface releases from tank overfills is a serious safety hazard, and every effort should be made to ensure that overfill equipment functions properly.

LDEQ proposes changes to the proposed rule to relieve facilities from overfill prevention equipment testing every three years for facilities that can provide facility records that indicate that the USTs were never filled to 90% capacity in the last three years. After the three year period, these facilities would be required to test their overfill prevention equipment at such time that they fill their tanks to 90% capacity, and would be on a three year schedule from that time on.

B. Additional Requirements for Operation and Maintenance

4. Secondary Containment Tests (71722 - 71724)

LDEQ Response:

LDEQ feels that several years of UST system release source/cause data should be used to evaluate the effectiveness of the 2005 Energy Policy Act requirement for secondary containment prior to requiring this testing provision. A comparison of releases from secondarily contained systems versus single-walled systems should be made prior to requiring more regulations on the newly-installed secondarily contained systems.

If the regulation proceeds as proposed, LDEQ recommends interstitial space testing every 5 years instead of every 3 years, in an effort to reduce costs to facilities.

LDEQ feels that if interstitial spaces are monitored continuously, either by vacuum, pressure, or with liquid sensors, periodic testing should be excluded.

B. Additional Requirements for Operation and Maintenance

5. Operation and Maintenance Requirements for Release Detection (71724 - 71725)

LDEQ Response:

LDEQ feels that this requirement is appropriate to help release detection equipment to work properly, thereby reducing the amount of contamination by allowing releases to be detected sooner.

C. Addressing Deferrals

1. Emergency Power Generator UST Systems (71725 - 71726)

LDEQ Response:

LDEQ records indicate that approximately 5% (205 out of 4226 facilities) of registered UST facilities in Louisiana have emergency power generator underground storage tanks. The phase-in period of 1 year may not provide adequate time for facilities to upgrade their tanks with release detection, therefore LDEQ proposes at least a 3 year phase-in period. Some small USTs do not

have adequate bungs/access ports for installation of release detection equipment, and this may require some UST owners to either perform Statistical Inventory Reconciliation (SIR) or permanently close their UST systems.

LDEQ feels that there should be a provision for emergency generator UST systems with pressurized piping systems that allows automatic line leak detectors to be by-passed during emergency condition product flow in order to prevent system shutdown in the event of an emergency.

C. Addressing Deferrals

2. Airport Hydrant Fuel Distribution Systems (71726 - 71731)

LDEQ Response:

LDEQ proposes that the definition of an airport hydrant system be modified to reflect that if a bulk aboveground tank (receiver tank) supplies fuel to an intermediary aboveground tank (feeder tank) that supplies fuel to the underground hydrant piping, the airport hydrant system should include both the receiver and feeder tank volumes and the 10% calculation should be based upon the total volume of both ASTs, not just the feeder tank.

C. Addressing Deferrals

3. UST Systems with Field-Constructed Tanks (71731- 71735)

LDEQ Response:

LDEQ does not support this regulation at this time because more information regarding the number of expected tanks that will require regulation is needed. Additionally, the types of tanks that will require regulating should be better defined. EPA should provide a better definition of what constitutes a field constructed tank. Would a hazardous substance dip vat constructed out of concrete be considered a field constructed tank? Would a drip pad sump be considered a field constructed tank? It is unknown how many such tanks/facilities would be brought into the UST universe. If a large number, then regulatory oversight will need to increase, and therefore, federal funding for inspections required by the Energy Act should increase.

C. Addressing Deferrals

4. Wastewater Treatment Tank Systems (71735 - 71737)

LDEQ Response:

LDEQ does not support this regulation at this time because more information regarding the number of expected tanks that will require regulation is needed and the types of tanks that will require regulating should be better defined. EPA should provide a better definition of what constitutes a wastewater treatment tank. Would a wastewater treatment tank that sends wastewater to pre-treatment facilities be a regulated UST? It is unknown how many such tanks/facilities would be brought into the UST universe. If a large number, then regulatory oversight will need to increase, and therefore, federal funding for inspections required by EA should increase.

D. Other Changes

6. Phase Out Vapor Monitoring and Groundwater Monitoring as Release Detection Methods (71742 - 71743)

LDEQ Response:

LDEQ does not support this regulation due to the impact on small businesses. Many small business owners use this method of release detection. However, Louisiana does recognize that problems exist with this release detection method as releases can go undetected if release detection devices (RDDs) are not constructed properly. However, Louisiana has RDD construction requirements that, if followed, result in properly constructed RDDs that effectively detect releases.

As an alternative to the proposed rule, LDEQ proposes that the new regulation state that if the implementing agency inspects a facility and verifies that the RDDs are constructed properly, the facility is allowed to continue using groundwater or vapor monitoring as a release detection method.

14% (1408 out of 10,249) of active underground storage tanks in Louisiana currently use groundwater or vapor monitoring as their sole method of release detection. 8% (841 out of 10249) of active underground storage tanks in Louisiana currently have RDDs installed but use other forms of release detection (ATG or SIR) and thus still have the option to use the RDDs in the event of an ATG equipment failure. In addition, vapor and groundwater monitoring are the only release detection methods that will positively identify product releases from spill buckets from all facilities and submersible turbine pumps at older facilities that do not have STP containment sumps.

Due to the large number of tanks in Louisiana that currently use RDDs as their sole method of release detection (14%), and the amount that can use RDDs as a back-up (8%), phasing this method out will create an undue economic hardship on UST owners in Louisiana.

E. General Updates

1. Incorporating Newer Technologies (71744 - 71746)

LDEQ Response:

LDEQ disagrees with the interpretation of current regulations that UST owners must obtain Statistical Inventory Reconciliation (SIR) results within the 30-day monitoring period. Many, if not most, SIR methods require close to 30 days of monitoring data in order to meet the performance standards set by EPA. Many UST owners choose these particular methods because they have proven to be effective. These methods would no longer be allowed if the results are required within the 30-day monitoring period. Approximately 1400 tanks in Louisiana are currently being monitored by SIR. This requirement could have an economic impact on these, as they may be forced to either change to a different, and possibly less effective, SIR method or install an ATG system.

F. Alternative Options EPA Considered (71753 - 71755)

LDEQ Response:

Of the three alternative options proposed, LDEQ prefers Option 2. Option 2 provides an increase in detecting releases earlier while creating less of an economic burden on small businesses.

V. Updates to State Program Approval Requirements (71755 - 71758)

LDEQ Response:

LDEQ feels that the a three-year timeframe for submitting SPA is too short given the amount of changes that EPA is proposing. The proposed regulations will add additional operating and possible upgrade costs to facilities, and these costs will increase the number of comments and opposition to the LDEQ rulemaking process, thus slowing down the process. LDEQ as a part of its rulemaking process is required to submit a "Small Business Fiscal Impact Statement (SBFIS) when proposing a regulation. Given the probable fiscal impact of the proposed regulations on small businesses, it is anticipated that the legislature will require a hearing to discuss the financial impact. LDEQ believes that EPA has underestimated the fiscal impact of the proposed regulations. The costs of the proposed regulations on small business may impact regulation passage. LDEQ proposes a five year timeframe for submitting a revised application in order to assure additional time to work with the legislature on the rule package.

VI. Overview of Estimated Costs and Benefits (71758)

LDEQ Response:

LDEQ disagrees with assessment that approximately 560 firms nationwide may exit the market due to increased compliance costs if these regulations become effective. Louisiana currently has approximately 620 individuals that own only one UST facility and 1704 businesses that own only one UST facility and these are considered small businesses. Many of these would be adversely affected by the increased compliance costs of these regulations as proposed. Increased compliance costs of monthly walkthrough inspections and potential increased upgrade costs for release detection changes in the proposed regulation may force many of these facilities out of business. Many of these small businesses supply fuel to Louisiana citizens in rural areas. As these small businesses exit the market, these citizens would have to travel further distances to obtain fuel. Many small businesses supply fuel to Louisiana citizens in hurricane evacuation routes. As these small businesses exit the market, fuel supply in emergency evacuation routes may become limited. LDEQ believes that EPA has underestimated the costs of the proposed regulations on small business.

Thank you for this opportunity to comment on the proposed revision to the Underground Storage Tank regulations.

Sincerely,



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Office of Environmental Compliance

CSN:TH

c: Willie Kelley, USEPA-Region 6